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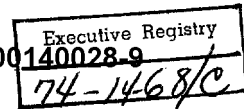
S. 3418 report on Committee Print #5:

Letter had been signed by WEC; OMB
cleared on 3 October. Letter had to be
dated 26 September because that was last
date WEC was here before leaving on trip.

ER notified of date, 10/3/74.

cg

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

OLC 74-1992

26 SEP 1974

Honorable Sam J. Ervin, Jr., Chairman
Committee on Government Operations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to a request from the staff of your Committee for views on a new Committee Print, No. 5, of S. 3418.

As explained in my letter to you of 23 July 1974 on S. 3418, certain information in the possession of this Agency must in the national interest remain confidential. The National Security Act of 1947 and the Central Intelligence Agency Act of 1949, have charged the Director of Central Intelligence with the responsibility for protecting Intelligence Sources and Methods from unauthorized disclosure (50 U.S.C.A. 403 (d)(3)) and exempted the Agency from provisions of law requiring public disclosures concerning organization, functions, names, titles, salaries, and numbers of personnel employed by the Agency (50 U.S.C.A. 403g).

The vast majority of this Agency's personal information holdings (foreign persons living abroad) have been excluded by definition in Committee Print No. 5. However, the application of the bill to a number of other files and information systems could seriously impair this Agency's mission.

Although section 203 provides limited exemptions for national defense or foreign policy reasons, certain sensitive intelligence sources and methods information arguably could not be exempted for these reasons even though its release would be damaging to the U.S. intelligence collection effort and the national interest and in conflict with the provisions of the National Security Act of 1947.

There are a number of other provisions in the bill which I believe could impair my capability to protect Intelligence Sources and Methods from unauthorized disclosure: (a) the Privacy Protection Commission, established under the bill, is granted absolute authority to investigate alleged violations; to conduct a study of standards and procedures to protect personal information; and to conduct hearings, take testimony, and subpoena witnesses and records as it deems necessary; (b) sections 104 and 105 require an agency to furnish any data, reports, or other information that the Commission deems necessary to carry out its functions; and (c) subsection 201(c)(3) requires the publication of specific data regarding files of personalities, including employees, and information systems maintained by the Agency.

Finally, section 304 grants jurisdiction to the district courts of the United States to hear civil actions brought under the Act and provides for an in camera examination and determination by the court of information for which an exemption is claimed under section 203. The Federal agency has the burden of establishing that the information is properly classified and that it is excludable under the Act. Perhaps I can best convey my view regarding this provision by quoting from a 20 August 1974 letter from President Ford to the Chairmen of the Conference Committee considering amendments to the Freedom of Information Act (H. R. 12471). Those amendments presently include a nearly identical judicial review provision:

"There are provisions... which would place the burden of proof upon an agency to satisfy a court that a document classified because it concerns military or intelligence (including intelligence sources and methods) secrets and diplomatic relations is, in fact, properly classified, following an in camera inspection of the document by the court. If the court is not convinced that the agency has adequately carried the burden, the document will be disclosed. I simply cannot accept a provision that would risk exposure of our military or intelligence secrets and diplomatic relations

because of a judicially perceived failure to satisfy a burden of proof. My great respect for the courts does not prevent me from observing that they do not ordinarily have the background and expertise to gauge the ramifications that a release of a document may have upon our national security. The Constitution commits this responsibility and authority to the President. I understand that the purpose of this provision is to provide a means whereby improperly classified information may be detected and released to the public. This is an objective I can support as long as the means selected do not jeopardize our national security interests. I could accept a provision with an express presumption that the classification was proper and with in camera judicial review only after a review of the evidence did not indicate that the matter had been reasonably classified in the interests of our national security. Following this review, the court could then disclose the document if it finds the classification to have been arbitrary, capricious, or without a reasonable basis." (10 Weekly Compilation of Presidential Documents, No. 34, Aug. 26, 1974)

In summary, it is my view that the protection of Intelligence Sources and Methods requires that practically all of our information on individuals and the details of our information systems must remain classified and not subject to public disclosure under S. 3418. As indicated in my earlier letter, it would be my preference that the Central Intelligence Agency be completely exempted from the bill. If this is not possible, it is requested that this Agency be granted a partial exemption (language enclosed).

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

SIGNED

W. E. Colby
Director

Enclosure

Distribution:

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- 1 - DCI
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- 1 - OLC Chrono

OLC/SWH:bao (13 Sep 74) (6136/9227)

Insert as new subsection 203(d)

"(d) The provisions of subsection 103(a)(2), subsection 104(a), subsection 105(a)(1), section 106, subsection 201(c) [except subsections (2), (3)(B), (3)(D) and (3)(F)], subsections 201(d) and (f), and section 202 shall not apply to the Central Intelligence Agency. Nor shall any other provision of this Act be construed so as to impair or affect the authorities and responsibilities of the Director of Central Intelligence under the National Security Act of 1947, as amended, or the Central Intelligence Agency Act of 1949, as amended."